To the same effect *Bowman et al.* v. *Humphrey,* 18 Ky. Law Rep. 511, 37 S. W. 150: *Corydon Bank* v. *McClure* (1909), — Ky. —, 110 S. W. 856, again in 130 S. W. 971 (1910). Decisions from other states to the same effect are: *First Nat. Bank* v. *Buchanan,* 87 Tenn. 32, 1 L. R. A. 199; *Bebout* v. *Bodle,* 38 Ohio St. 500; *Allen* v. *Sharpe,* 37 Ind. 67. In *Bangs & Allcott* v. *Strong,* 10 Paige, Ch. 11, the court said that the surety is not discharged provided the creditor acted diligently upon discovering the fraud. The rule is well settled that to discharge the surety there must be more than a mere indulgence, there must be an extension of time on a valid and enforcible agreement. The creditor must have tied his hands during the period of extension, 32 Cyc. 191. It will hardly be contended that the extension of time granted in the principal case was binding on the creditor. The first note never was paid or extinguished. *Ritter* v. *Singmaster,* 73 Pa. St. 400. Nor does it make any difference, that the principal himself is liable on the renewal note, *Carter* v. *Bank of Columbia,* supra. Cancelling the old note through *mistake* discharges the surety if prejudicial to him, *Marshall Field & Co.* v. *Southerland,* 136 Ia. 218, 113 N. W. 770, 13 L. R. A. (N. S.) 576. The principal case presents a condition of affairs in which one of two innocent parties must suffer. This court seems to think that the burden should fall on the creditor, but the weight of authority seems to put the burden on the surety.

Taxation of Easements—Tax Sale.—In 1899 the defendants purchased certain lands in the city of Detroit, the deed conveying an easement for a railway track across a certain thirty-foot strip of land adjoining. Later that year J. F. Murphy as trustee, with money furnished by the Murphy Chair Co., who owned other adjoining lands, purchased the fee of the said thirty-foot strip subject to all easements. Taxes for the year 1903, not having been paid, the strip was sold to one Wiltsie of Rochester, N. Y. In 1906 the Murphy Chair Co. paid Wiltsie the amount of this claim, and the certificate of purchase was assigned by him in blank. This blank certificate, filled in with the name of A. D. Stansell, an associate of the counsel for the Michigan Chair Co., and James F. Murphy, was surrendered to the City Controller and a tax lease for ninety-nine years was issued to and in the name of Mr. Stansell who took it for the benefit of the Murphy Chair Co. In 1907 Stansell filed the bill in this case to remove the cloud from the title to the thirty-foot strip created by the easement of the defendant Co., upon the theory that it was wiped out by the sale and the ninety-nine year lease. *Held,* Stansell was merely a nominal complainant for the benefit of the Murphy Chair Co. It was its duty to pay the taxes on the servient estate, and its acquisition of the title through the transfer of the tax-sale certificate to its attorneys was, as to the defendant, a mere discharge of its duty, which gave it no new rights as to him. *Stansell* v. *American Radiator Co.* (1910), — Mich. —, 128 N. W. 789.

Although not necessary to the decision in this case, the court also came to the conclusion that the purchaser under the tax-sale of the thirty-foot strip which was subject to an easement would, in any event, take the servient estate subject to the easement. The court holds that under the statute, Compiled Laws §§ 3825 and 3850, easements for purposes of taxation must be regarded

as a part of the dominant estate. No doubt this is the correct rule, both at common law and under the statutes. In the case of *Lever* v. *Grant,* 139 Mich. 273, the court apparently held that if the servient estate was sold for taxes, the easement was extinguished. In 8 MICH. L. REV. 361, in an Article entitled "Taxation of Easements" by Bradley M. Thompson, attention is called to the fact, that if such was the holding in that case, the court was in error. The court in the principal case did not call attention to this phase of *Lever* v. *Grant* and we must assume that the former case can be distinguished from the present one. In any event it would seem that the owner of a dominant estate in Michigan may now feel assured that he is in no danger of losing an easement, appurtenant to his estate, lost through the neglect of the owner of the servient estate, to pay the taxes assessed thereon.

WATERS AND WATER COURSES—OWNERSHIP OF GREAT PONDS—COMMON LAW.—Bill in equity to enjoin defendants entering upon and fishing and shooting upon a pond containing about 175 acres. The plaintiffs claim title to the pond extending back to 1631 through a grant by the Plymouth Council. The defendants claim that this is a public pond upon which the public has the right of free fishing and free fowling. The Colonial Ordinance of Massachusetts in 1641, the provisions of which were by the Provincial Charter extended to Maine in 1692, provided that all ponds containing ten acres or more were public ponds. *Held,* even before this Ordinance, that was the common law of Maine and there never was private ownership of great ponds in Maine. *Conant et al.* v. *Jordan et al.* (1910), — Me. —, 77 Atl. 938.

By the Provincial Charter of 1692 the provisions of the Colonial Ordinance of 1641 were extended not only to Maine, but to the Plymouth Colony which at that time became a part of the Massachusetts province. In *Watuppa Reservoir Co.* v. *City of Fall River,* 154 Mass. 305, 28 N. E. 257, 13 L. R. A. 255, the Supreme Court of Massachusetts held that private ownership of lakes of ten acres or more could have been obtained before 1692 in the then Plymouth Colony, or, in other words, that the rule that the title to ponds of ten acres or more was in the public, was not the law of any section of the Massachusetts province until the Colonial Ordinance of 1641 was established as the law in that section. *Comm.* v. *Alger,* 7 Cush. 53. *Inhabitants of West Roxbury* v. *Stoddard,* 7 Allen 158. In the principal case, however, the Maine court held that the rule set forth in the Colonial Ordinance was always the law of Maine, even before 1692, and there never was private ownership of ponds of ten acres or more. The rule of public ownership of lakes of ten acres or more as set forth in the Colonial Ordinance has been adopted by judicial decision by the states of Iowa and Vermont, *Noyes* v. *Collins,* 92 Iowa 566; *Fletcher* v. *Phelps,* 28 Vt. 257, 262, and by New Hampshire which limits the size of the pond to fifteen acres or more, *Dolbeer* v. *Suncook Waterworks Co.,* 72 N. H. 562, 58 Atl. 504, while in Wisconsin the test is whether the lake is meandered or navigable, *Rossmiller* v. *State,* 114 Wis. 69, 89 N. W. 839, 58 L. R. A. 93. In the majority of states, however, lakes are the subject of private ownership. *Hardin* v. *Jordan,* 140 U. S. 371; *Smith* v. *Rochester,* 92 N. Y. 463, 44 Am. Rep. 393; *Lembeck* v. *Nye,* 47 Ohio St. 336, 8 L. R. A. 578; *Clute* v. *Fisher,* 65 Mich. 48; *Stoner* v. *Rice,* 121 Ind. 51, 6